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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

ALFREDO VARGAS RAMIREZ, Plaintiff and Appellant, v. ARVEST CENTRAL MORTGAGE COMPANY, Defendant and Respondent.	B283575 (Los Angeles County Super. Ct. No. TC028518)

APPEAL from a judgment of the Superior Court of Los Angeles County, Brian S. Currey, Judge. Affirmed.

Alfredo Vargas Ramirez, in pro. per., for Plaintiff and Appellant.

Anderson, McPharlin & Conners, Vanessa H. Widener and Lisa Anne Coe for Defendant and Respondent.

Alfredo Vargas Ramirez (plaintiff), who is self-represented[1], appeals from a judgment of dismissal after an order sustaining the demurrer of Arvest Central Mortgage fka Central Mortgage Company dba Central Mortgage Loan Servicing Company (defendant) to his second amended complaint (SAC) without leave to amend.

Plaintiff, a borrower on a real estate loan, alleged three causes of action in the SAC that are relevant to this appeal: violation of his right under Civil Code section 2937 (section 2937)[2] to receive notice of transfers of the servicing of his

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[1] Plaintiff was represented by counsel in the trial court until the time he filed the operative second amended complaint (SAC), which he filed in propria persona. The trial court granted plaintiff's two successive attorneys' respective motions to be relieved as counsel: the first, after it ruled on defendant's demurrer to plaintiff's initial complaint and the second, after it ruled on defendant's demurrer to plaintiff's first amended complaint (FAC). We note that plaintiff's attorneys were associated with the same law firm.

[2] Section 2937 requires "[a]ny person transferring the servicing of indebtedness . . . to a different servicing agent and any person assuming from another responsibility for servicing the instrument evidencing indebtedness[to] give written notice to the borrower or subsequent obligor before the borrower or subsequent obligor becomes obligated to make payments to a new servicing agent." (§ 2937, subd. (b).) Additionally, it provides for damages as follows: "The borrower or subsequent obligor shall not be liable to the holder of the note, bond, or other instrument or to any servicing agent for payments made to the previous servicing agent or for late charges if these payments were made prior to the borrower or subsequent obligor receiving written

loan, negligence, and unfair business practices under Business and Professions Code section 17200.[3] Plaintiff asserted a fourth cause of action for violation of Civil Code section 2924, which plaintiff has abandoned on appeal.

Plaintiff alleged that as a borrower on a real property loan, he was entitled to receive notice of transfers of the servicing of his loan, but that defendant provided no notice when the beneficial interest in his loan was assigned three times. Plaintiff further alleged that defendant breached its duty of care by placing plaintiff's loan in a servicing pool, causing him to misdirect his mortgage payments "to third parties," whom the SAC does not identify, and committed another unfair business practice by failing to review plaintiff for a first lien loan modification, for which he would have qualified.

Defendant demurred to the SAC arguing that it alleged insufficient facts to state a cause of action and was uncertain. (See Code Civ. Proc., § 430.10, subds. (e), (f).) The trial court agreed and denied plaintiff leave to amend.

Plaintiff argues, among other contentions, that the trial court erred in sustaining defendant's demurrer to his SAC without leave to amend because the allegation that he did not receive notice of the assignments was sufficient to state a claim under section 2937, breach of duty and causation under his

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notice of the transfer . . . and the payments were otherwise on time." (*Id.*, subd. (g).)

[3] Business and Professions Code section 17200 defines unfair competition as including "any unlawful, unfair or fraudulent business act or practice."

common law negligence theory, and an unfair business practice under Business and Professions Code section 17200.[4]

We conclude plaintiff's contentions lack merit because plaintiff confuses servicing the loan with holding a beneficial interest in the loan: Section 2937 requires notice to the borrower only of a loan servicing transfer, but the SAC does not allege that defendant ever transferred or accepted from another responsibility for servicing the loan. Plaintiff does not indicate he could allege that his loan's servicing agent ever changed, were he granted leave to amend. These flaws are fatal to plaintiff's section 2937 and negligence causes of action because plaintiff cannot allege any duty was triggered or breached by defendant.

Concerning plaintiff's unfair business practices claim, his allegation that he was not reviewed for a loan modification is fatally contradicted by the fact of the two recorded loan modification agreements, of which the trial court properly took judicial notice. Plaintiff also does not allege that he made timely payments and therefore cannot plead damages because section 2937 subdivision (g) requires that "the payments were otherwise on time."

Accordingly, we affirm.

FACTUAL BACKGROUND

We summarize below the facts relevant to this appeal that plaintiff alleges in the SAC.

At all relevant times, plaintiff resided at certain real property in Compton. On November 17, 2006, he financed the property by executing a promissory note and deed of trust in

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[4] We note plaintiff did not file a reply brief.

exchange for a $340,000 loan from BC Bancorp. All the loan documents listed the property's address as the property's and plaintiff's mailing address.

On December 1, 2006, the deed of trust was recorded in the Los Angeles County Recorder's Office. It named Southland Title as trustee, BC Bancorp as lender, and Mortgage Electronic Registration Systems, Inc. (MERS) as the lender's nominee and beneficiary.[5] The deed of trust stated under section 20, "The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower." It further stated, "If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser." An adjustable rate rider incorporated by reference and attached to

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[5] We note our Supreme Court has explained MERS' function as follows: "MERS was formed by a consortium of residential mortgage lenders and investors to streamline the transfer of mortgage loans and thereby facilitate their securitization. A member lender may name MERS as mortgagee on a loan the member originates or owns; MERS acts solely as the lender's 'nominee,' having legal title but no beneficial interest in the loan. When a loan is transferred to another MERS member, MERS can execute the transfer by amending its electronic database. When the loan is assigned to a nonmember, MERS executes the assignment and ends its involvement." (*Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 931, fn. 7.)

the deed of trust provided, "I will make my monthly payments at P. O. Box 82370, Phoenix, Arizona 85071-2370."

On October 3, 2008, a notice of default and election to sell was recorded and subsequently rescinded on January 14, 2009. On August 20, 2009, the first of two loan modification agreements between plaintiff and defendant was recorded. This loan modification agreement was silent on a change of servicing agent.

On December 23, 2013, the deed of trust was reassigned the first of three times, on this occasion from BC Bancorp to defendant, and recorded on January 3, 2014. All three assignments were silent on a change of servicing agent. On January 6, 2014, defendant substituted Old Republic Default Management Services, a Division of Old Republic National Title Insurance Company as trustee, which substitution was recorded on January 10, 2014.

On January 15, 2014, a second notice of default and election to sell was recorded. On May 21, 2014, a notice of trustee's sale was recorded. On December 12, 2014, plaintiff entered into a second loan modification agreement with defendant. This agreement stated in relevant part, "Borrower must make the monthly payments at Central Mortgage Company, P.O. Box 8025, Little Rock, AR 72203 or such other place as Lender may require." (Underscoring omitted.)

On June 10, 2014, plaintiff sued defendant in a separate lawsuit in Los Angeles Superior Court, case No. BC548258, alleging misconduct concerning the first loan modification and servicing of the mortgage. The record does not indicate that lawsuit's status or outcome, but defendant states in its opposition brief that the lawsuit was dismissed with prejudice on November 12, 2014. On June 16, 2014, plaintiff filed for

Chapter 13 bankruptcy, which case was dismissed one month later for failure to file the required schedules. On December 23, 2014, the second notice of default was rescinded.

Sometime "[i]n 2015 after experiencing hardship, plaintiff found himself in severe financial distress and requested foreclosure alternatives from" defendant and MTC Financial Inc. dba Trustee Corps (MTC).[6] (Capitalization omitted.) On January 15, 2015, the second loan modification agreement was recorded.

On September 28, 2015, the deed of trust was reassigned the second of three times, on this occasion from defendant to MERS, recorded October 9, 2015.

On April 18, 2016, the deed of trust was reassigned a third and final time, this time from MERS, as BC Bancorp's nominee, back to defendant, and recorded on April 28, 2016. On April 21, 2016, defendant substituted MTC for trustee, which substitution was recorded on May 12, 2016.

Plaintiff asserts he received no written notice "as to the servicing of the indebtedness, when BC Bancorp transferred it[s] interest to MTC . . . [or] when the interest in the . . . property was transferred to" defendant.[7]

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[6] We recognize that this allegation seems out of chronological sequence because the record indicates that plaintiff had already defaulted twice and entered into two loan modification agreements.

[7] Plaintiff does not clarify whether this refers to the first or third assignment or both. Additionally, plaintiff alleged in the FAC under the negligence cause of action that the third assignment, from MERS for BC Bancorp to defendant, and consequently the May 2016 notice of default, were invalid

On May 10, 2016, MTC executed a notice of default and election to sell under the deed of trust, recorded on May 12, 2016. Attached to it is a declaration dated March 3, 2016 and signed by a Tina McClain in Arkansas as the "officer or custodian of records for Central Mortgage Company D/B/A Central Mortgage Loan Servicing Company." (Underscoring omitted.) She declares in relevant part, "Servicer does hereby state that on 12/28/2015 Servicer has contacted the Borrower . . . to (1) assess the borrower's financial situation; (2) explore options with the Borrower to avoid foreclosure . . . ; (3) Inform Borrower of Borrower's right to a subsequent meeting . . . ; and (4) provide Borrower with a toll-free number to a HUD certified counseling agency." In reference to that declaration, when the second assignment was recorded on October 9, 2015, defendant had no interest in the property when the notice of default was recorded and therefore, defendant could not have contacted or attempted to contact plaintiff.

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because BC Bancorp had already assigned its interest in the loan (to defendant on December 23, 2013, the first assignment) and could not therefore assign its interest in the loan again. The operative SAC contains similar allegations but only under the second cause of action that plaintiff abandoned. In any event, with respect to these allegations as applied to plaintiff's negligence theory, the trial court stated in its ruling on defendant's demurrer to the FAC that the FAC pled insufficient facts and was uncertain, particularly concerning the breach of duty and causation elements. It reasoned that the FAC failed to specify for each of the three assignments, the reasons the assignment was invalid, or facts tying plaintiff's default, his home's foreclosure, and late fees to defendant.

Plaintiff was not reviewed for a first lien loan modification, but if he had been, he would have qualified for a permanent loan modification as a foreclosure alternative.

As a result, plaintiff suffered extreme emotional distress, received no loan modification, and paid penalties and interest on "back dues" he would not have owed but for defendant and MTC's alleged misconduct.

PROCEDURAL HISTORY

A. Plaintiff Filed The Complaint, FAC, And Operative SAC

On August 11, 2016, plaintiff, through counsel, commenced this lawsuit against defendant and MTC[8] asserting seven causes of action. The first six causes of action respectively asserted violations of Civil Code sections 2923.55, 2923.6, 2937, 2924.17, 2924, subdivision (a)(6), and 2924.12. The seventh cause of

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[8] About six weeks after plaintiff brought suit, MTC filed a declaration of nonmonetary status, and plaintiff timely objected. We observe that in its judgment, the trial court dismissed defendant but not MTC. (Civ. Code, § 2924*l*, subd. (e) [trustee required to participate in action or proceeding upon timely objection to its declaration of nonmonetary status].) Although neither party raises the issue of appealability, " 'we are dutybound to consider' the question of appealability because it implicates our jurisdiction." (*Ram v. OneWest Bank, FSB* (2015) 234 Cal.App.4th 1, 9.) Here, the judgment is appealable even if MTC remains in the case because the judgment left no issues to be determined as to defendant. (*Ibid.* [" 'the "one final judgment" rule' " does not apply " ' "when the case involves multiple parties and a judgment is entered which leaves no issue to be determined as to one party." ' "].)

action was for unfair business practices. Defendant demurred, and plaintiff filed the FAC as a matter of right, mooting the demurrer. (See Code Civ. Proc., § 472, subd. (a).)

The FAC contained four causes of action: violation of section 2937, violation of Civil Code section 2924, subdivision (a)(6), negligence, and unfair business practices. The first, third, and fourth causes of action are relevant to this appeal.

Plaintiff alleged in the FAC that defendant violated section 2937 by failing to give notice of the three assignments and unspecified changes to the servicing agent. The basis for the negligence cause of action was the invalidity of the third assignment, from MERS for BC Bancorp to defendant, because BC Bancorp had already assigned away its rights via the first assignment from BC Bancorp to defendant. Finally, plaintiff alleged defendant committed an unfair business practice "[b]y virtue of the acts and omissions" without specifying which ones.

Defendant demurred to the FAC. The trial court adopted its approximately-two-page tentative ruling and sustained the demurrer with leave to amend.

The trial court found the first cause of action was defective because it failed to allege defendant transferred or assumed from another the responsibility for servicing the loan or that plaintiff misdirected any payments or incurred late charges. It further found the allegation that had plaintiff known the lender and servicer's identity, a loan modification would have been unnecessary, was conclusory and contradicted by the loan modification agreements into which plaintiff entered with defendant as lender and which specified that plaintiff should send his payments to defendant at a particular address.

Concerning the negligence claim, the trial court found the breach and damages allegations were conclusory by failing to state a fact that could establish that the assignments were invalid or caused plaintiff's default and foreclosure on his home. Regarding unfair business practices, the trial court found the allegation that "[b]y virtue of the acts and omissions of the defendants" was conclusory, and the FAC failed to allege injury-in-fact to establish plaintiff's standing.

On April 14, 2017, plaintiff filed his SAC asserting the same four causes of action as those in the FAC.[9] Attached to the SAC as exhibits were the deed of trust, the three assignments, the substitution of trustee, and the May 2016 notice of default. In brief, plaintiff alleges in the SAC that defendant failed to provide notice to plaintiff of the three assignments of the beneficial interest in his mortgage in violation of section 2937, which also constituted a breach of defendant's general duty of care to plaintiff and an unfair business practice.

By way of amendment to the FAC, plaintiff further alleges in the SAC under the negligence cause of action that defendant breached its duty of care by placing plaintiff's mortgage in a servicing pool. In the unfair business practices cause of action, plaintiff added that he was not reviewed for a first lien loan modification for which he would have qualified.

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[9] Plaintiff failed to file the SAC within the time allowed, and defendant applied ex parte to move to dismiss the action on that basis. In response, the trial court extended the time for plaintiff to file the SAC and continued the hearing on defendant's motion to dismiss. The appellate record does not indicate how defendant's motion to dismiss was ultimately resolved.

B. Defendant Demurred To The SAC

Defendant demurred to each cause of action asserted in plaintiff's SAC for insufficient facts and uncertainty. Defendant argued the first cause of action was defective because it lacked allegations that defendant "was the entity transferring or the entity assuming from another responsibility for *servicing* the loan" and section 2937 applies only to transfers of servicing. In other words, defendant argued the allegation that the beneficial interest in plaintiff's loan was assigned did not trigger defendant's notice obligations under section 2937.

Defendant further argued the damages allegations were insufficient because they did not assert plaintiff misdirected any payments or any cognizable damages under section 2937. Defendant acknowledged the new allegation in the negligence cause of action that the lack of notice caused plaintiff to make payments to third parties. Defendant retorted that this allegation was not in the section 2937 cause of action and was insufficient to state facts about when plaintiff made an erroneous payment, the amount of any such erroneous payment, or whether a payment was actually misapplied. Defendant further argued that the fact of the two loan modification agreements established that plaintiff was aware about where to make the mortgage payments.

As to the third cause of action for negligence, the allegations that defendant breached its duty "by failing to exercise reasonable care and skills by placing plaintiff's mortgage loan into a servicing pool" and that plaintiff did not receive written notice about servicing the indebtedness were insufficient and uncertain. There was no allegation about misapplied payments, and the loan modification agreements

refuted any claim of misdirected payments. With respect to the servicing pool allegation, defendant argued that as a mere lender, it owed no general duty of care to the plaintiff-borrower as a matter of law. The assignment from MERS to defendant, moreover, was merely voidable and therefore plaintiff lacked standing to challenge it. Thus, the SAC failed to allege facts that could establish defendant breached a duty or proximately caused plaintiff's injury.

Defendant argued the fourth cause of action for unfair business practices was similarly defective in including merely conclusory allegations of causation and damages, and failing to demonstrate plaintiff had standing to bring the claim. In particular, the allegations that plaintiff was never reviewed for a first lien loan modification and that had he obtained that review, he would have qualified for a permanent loan modification, were contradicted by the judicially noticeable fact of the two prior loan modifications. Finally, defendant contended plaintiff failed to plead causation because plaintiff did not allege misconduct by defendant, defendant agreed to two prior loan modifications, and plaintiff's own delinquent payments were the true cause of his purported injuries.

C. Plaintiff Opposed Defendant's Demurrer To The SAC

Plaintiff, now self-represented, opposed.[10] Plaintiff's opposition extensively cited law but did not apply it to the alleged

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[10] Although not raised as an issue on appeal, we note that in the trial court, defendant filed a notice of nonreceipt of opposition after the statutory deadline for plaintiff to file and serve an opposition to defendant's demurrer to the SAC had lapsed. (See Code Civ. Proc., § 1005, subds. (b), (c).) The same

facts, address defendant's arguments specifically, address the second cause of action at all, or request leave to amend. Concerning the first cause of action, plaintiff quoted law and then summarily concluded that he "has alleged and stated facts sufficient to overrule the defendant's demurrer as to his Cal. Civ. Code § 2937 cause of action in the SAC." Similarly, on the third cause of action for negligence, plaintiff set forth general law concerning the elements of a negligence cause of action and asserted that section 2937 created a duty.[11] Finally, on the fourth cause of action for unfair business practices, plaintiff cited law and summarily concluded that the SAC stated sufficient facts.

D. The Trial Court Sustained Defendant's Demurrer To Plaintiff's SAC Without Leave To Amend

The trial court issued a written tentative ruling sustaining defendant's demurrer to plaintiff's SAC without leave to amend

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day, plaintiff served his opposition papers. The following day, plaintiff filed his opposition papers. The trial court addressed this issue in its ruling and did not err in considering plaintiff's untimely opposition papers in light of defendant's having timely filed reply papers that addressed the merits of plaintiff's opposition. (See Cal. Rules of Court, rule 3.1300(d); *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 697 [where party addresses merits in response to a late-filed paper, it waives objections for defective notice].)

[11] We infer that plaintiff was referring to the negligence per se doctrine, which creates an evidentiary presumption of duty and informs the standard of care in a negligence cause of action. (*Turner v. Seterus, Inc.* (2018) 27 Cal.App.5th 516, 534-535.)

as follows. On the section 2937 claim, the SAC failed to allege defendant transferred or assumed from another responsibility for servicing the loan; thus, the allegation that the beneficial interest in the loan was assigned without notice to plaintiff was insufficient to trigger section 2937's notice requirement. Plaintiff's damages allegations were deficient because plaintiff did not allege he misdirected mortgage payments or incurred resulting late charges—the only damages available under section 2937. Additionally, plaintiff constructively knew that defendant was the loan servicer based on the two uncontroverted recorded loan modification agreements, into which plaintiff entered with defendant in 2009 and 2014, respectively.

Concerning plaintiff's negligence cause of action, the trial court held the alleged breach of duty, that defendant placed plaintiff's loan into a servicing pool, was conclusory. Additionally, plaintiff failed to allege facts connecting his loan's having been placed in a servicing pool to his being in default or the foreclosure on his home.

The trial court also found the unfair business practices allegations were conclusory. Additionally, the allegation that plaintiff was not reviewed for a first lien loan modification for which he would have qualified was contradicted by the judicially noticeable fact of the two prior loan modifications.

The trial court declined to grant leave to amend for the following reasons: The SAC was plaintiff's third attempt to state a viable claim; the SAC restated the FAC almost verbatim; the only new allegations were conclusory and failed to address the defects identified in the trial court's ruling on defendant's demurrer to the FAC; plaintiff did not request leave to amend in

his opposition papers; and plaintiff's opposition papers did not demonstrate an ability to amend.

In addressing the demurrer, the trial court granted the parties' requests for judicial notice of several recorded documents concerning the property. These documents included the deed of trust and three related assignments, the two loan modification agreements, the substitution of trustee, bankruptcy court records, the complaint plaintiff filed in his earlier civil lawsuit against defendant, the notices of default and related notices of rescission, and the notice of trustee's sale. Neither party objected to the other party's request for judicial notice, and plaintiff does not assert on appeal that the trial court improperly took judicial notice of these matters or improperly misapplied them in its analysis of defendant's demurrer to the SAC.

The trial court "also incorporate[d] by reference" the four exhibits attached to defendant's counsel's declaration filed concurrently with defendant's demurrer to the SAC. These exhibits relate to a third loan modification request. The trial court did not take judicial notice of these documents, and neither party requests judicial notice of them on appeal.

The trial court adopted its tentative ruling as final and entered a judgment of dismissal. Plaintiff appealed.[12]

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[12] Plaintiff filed the notice of appeal on June 14, 2017, before the trial court entered judgment on June 28, 2017 but after it announced its intended ruling at the June 8, 2017 hearing. Defendant does not assert a procedural defect on this ground or claim prejudice. We exercise our discretion to treat plaintiff's premature notice of appeal as timely. (Cal. Rules of Court, rule 8.104(d) ["reviewing court may treat a notice of appeal filed after the superior court has announced its intended

STANDARD OF REVIEW

"In reviewing an order sustaining a demurrer, we examine the operative complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory." (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162 (*T.H.*).) We "adopt[ ] a liberal construction of the pleading and draw[ ] all reasonable inferences in favor of the asserted claims." (*Candelore v. Tinder, Inc.* (2018) 19 Cal.App.5th 1138, 1143.) "[W]e accept as true all properly pleaded facts." (*T.H.*, *supra*, 4 Cal.5th at p. 156.) We also accept as true the matters of which the trial court properly took judicial notice. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42 (*Green Foothills*).) "[W]e are not[, however,] required to accept the truth of [the pleading's] legal conclusions." (*Yhudai v. IMPAC Funding Corp.* (2016) 1 Cal.App.5th 1252, 1257.)

Additionally, we observe "the general rule[s] that statutory causes of action must be pleaded with particularity" (*Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795), specific allegations control over inconsistent general ones (*Esparza v. Kaweah Delta Dist. Hospital* (2016) 3 Cal.App.5th 547, 552), and facts subject to judicial notice and appearing in exhibits attached to the operative pleading prevail over

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ruling, but before it has rendered judgment, as filed immediately after entry of judgment"; see *Irving Nelkin & Co. v. South Beverly Hills Wilshire Jewelry & Loan* (2005) 129 Cal.App.4th 692, 699, fn. 5 [California Rules of Court, former rule 2(e) accommodates premature notices of appeal].)

contradictory allegations (*Orcilla v. Big Sur, Inc.* (2016) 244 Cal.App.4th 982, 994).

We review the trial court's denial of leave to amend a defective pleading for abuse of discretion. (*Goonewardene v. ADP, LLC* (2016) 5 Cal.App.5th 154, 162.) "If the complaint does not state facts sufficient to constitute a cause of action, the appellate court must determine whether there is a reasonable possibility that the defect can be cured by amendment." (*Phoenix Mechanical Pipeline, Inc. v. Space Exploration Technologies Corp.* (2017) 12 Cal.App.5th 842, 847.)

DISCUSSION

A. The Appellate Record Is Not Inadequate For Omitting A Reporter's Transcript Because It Contains The SAC, Parties' Trial Court Briefs, Requests For Judicial Notice, And Exhibits On Defendant's Demurrer To The SAC, And Trial Court's Ruling Which States Its Reasoning And Materials Considered

Defendant argues that the judgment should be affirmed because the record is inadequate without a transcript of the relevant hearings. We disagree.

The record is sufficient for us to address whether the trial court properly sustained the demurrer and refused to grant leave to amend. It includes the SAC and attached exhibits, parties' trial court briefs regarding the demurrer to the SAC, matters of which the parties requested and trial court took judicial notice, and trial court's ruling. These documents are sufficient for us to ascertain the issues and arguments raised below, especially given that in reviewing a ruling on a demurrer,

our analysis is limited to the operative complaint's four corners, attached exhibits, and judicially noticeable matters. (*T.H.*, *supra*, 4 Cal.5th at pp. 156, 162; *Green Foothills*, *supra*, 48 Cal.4th at p. 42.) Defendant moreover does not argue that plaintiff has made an argument on appeal that was not asserted below. Additionally, the record does not indicate a reporter was present at the hearing on defendant's demurrer to the SAC, and defendant does not argue that a settled statement was required. We thus turn to the merits.

B. The Trial Court Did Not Err In Sustaining The Demurrer To The First Cause Of Action For Violation Of Section 2937 Without Leave To Amend Because There Is No Allegation Of Failure To Give Plaintiff Notice Of A Servicing Transfer

Section 2937, subdivision (b) requires "[a]ny person transferring the servicing of indebtedness [secured by a mortgage or deed of trust on real property] to a different servicing agent and any person assuming from another responsibility for servicing the instrument evidencing indebtedness[to] give written notice to the borrower . . . before the borrower . . . becomes obligated to make payments to a new servicing agent."

In interpreting this requirement, our Supreme Court has stated that "the bankruptcy court and the Court of Appeal assumed that section 2937 requires that a borrower be given notice of the *assignment* of the debt. However, by its terms the section requires only that a borrower be given notice of *transfer of servicing* of a debt . . . ." (*Summit Financial Holdings, Ltd. v. Continental Lawyers Title Co.* (2002) 27 Cal.4th 705, 710, fn. 3 [declining to extend section 2937 to assignments of debt].) "The

statute is not triggered by an assignment or other transfer of the note and deed of trust, but only by a transfer of 'servicing.' " (5 Miller & Starr, Cal. Real Estate (4th ed. 2018) § 13:50, pp. 13-223 to 13-224.)

Regarding damages, section 2937, subdivision (g) provides that if the borrower made these payments prior to receiving written notice of the transfer and the payments were otherwise timely, "[t]he borrower . . . shall not be liable to the holder of the note, bond, or other instrument or to any servicing agent for payments made to the previous servicing agent or for late charges . . . ."

Plaintiff alleges the following facts relevant to the demurrer. Defendant failed to provide notice of the three assignments or transfers of servicing. On November 17, 2006, plaintiff obtained a loan from BC Bancorp. Plaintiff was listed as the only borrower and his mailing address was listed as the property's address. Plaintiff received no notice when BC Bancorp transferred its interest to MTC or when the beneficial interest was transferred to defendant. "Plaintiff is unaware of when and how the servicing changed, except for what is provided by the recorded documents." The deed of trust was assigned from BC Bancorp to defendant, then to MERS, and finally by "MERS for BC BANCORP" to defendant. "Plaintiffs [*sic*] have suffered damages in an amount according to proof at the time of trial."

In his appellate brief, plaintiff recites these allegations and asserts that "[t]he issue . . . is whether [defendant] owes a duty of care to Notice for transfer of servicing" without citation to the record of any such transfer.

Plaintiff appears to confuse transferring responsibility for servicing the loan with assigning the beneficial interest in the

loan. The controlling authority differentiates these acts. Section 20 of the deed of trust makes this distinction as well in stating that "the Note purchaser" does not necessarily assume "the mortgage loan servicing obligations to Borrower."

In liberally construing the allegations in plaintiff's favor, we note under the negligence cause of action, plaintiff alleges that defendant placed plaintiff's loan in a servicing pool. Plaintiff does not, however, state what he means by "servicing pool" or explain why a loan's being placed in a servicing pool is tantamount to, automatically causes, or otherwise constitutes a change of servicing agent. Plaintiff also does not state when his loan was purportedly placed in a servicing pool.

Plaintiff alleges three assignments: December 23, 2013 from MERS as BC Bancorp's nominee to defendant, September 28, 2015 from defendant to MERS, and April 18, 2016 from MERS, as BC Bancorp's nominee, to defendant. He does not allege a transfer of servicing. The appellate record demonstrates defendant obtained a beneficial interest in the loan by the first and third assignments, and was the servicer on March 3, 2016, the date of execution of the declaration accompanying the third notice of default. From this record, one cannot infer that defendant transferred or assumed from another the responsibility for servicing the loan.

We acknowledge that the 2006 deed of trust required plaintiff to direct his mortgage payments to an address in Phoenix, Arizona and the second loan modification agreement required plaintiff to direct his payments to defendant at an address in Little Rock, Arkansas. The second loan modification's expressly directing plaintiff to make his payments at a certain address contradicts any suggestion that plaintiff did not receive

written notice of any servicing transfer one could infer from the different addresses in the deed of trust and second loan modification agreement. Further, given that the second loan modification was recorded in January 2015, plaintiff cannot attribute a purported lack of notice of any servicing transfer to his defaulting on the loan on November 1, 2015, which is the payment the latest notice of default indicated plaintiff missed. Thus, the judicially noticeable recorded documents show that plaintiff received requisite notice of where to direct his payments well before he defaulted on his loan. Therefore, causation is absent.

Finally, plaintiff does not plead damages because he does not allege that he made timely payments, which is required under section 2937, subdivision (g) for a borrower such as plaintiff to avoid liability to the note holder or servicing agent for late charges. Rather, plaintiff admits that he experienced financial distress and requested foreclosure alternatives, and the judicially noticeable documents show that plaintiff defaulted three times and filed for bankruptcy.

As set forth above, the trial court gave plaintiff more than one opportunity to correct the deficiencies in the pleading. In response, plaintiff merely repeated allegations that the trial court had previously found deficient. We conclude the trial court did not err in sustaining defendant's demurrer to the SAC's section 2937 cause of action or abuse its discretion in denying leave to amend.

C. The Trial Court Did Not Err In Sustaining The Demurrer To The Third Cause Of Action For Negligence Without Leave To Amend Because The SAC Fails To Plead Duty, Breach, Or Causation, And Plaintiff Does Not Proffer Any Ability To Amend

"The elements of any negligence cause of action are duty, breach of duty, proximate cause, and damages." (*Peredia v. HR Mobile Services, Inc.* (2018) 25 Cal.App.5th 680, 687.)

Plaintiff alleges defendant had a duty to exercise reasonable care and skill when "servicing and handling" plaintiff's loan. He alleges the fact of the three recorded assignments and substitution of trustee detailed above. Plaintiff further alleges defendant breached this duty "by placing plaintiff's mortgage loan into a servicing pool," and plaintiff "never receive[d] any written notice as to the servicing of the indebtedness" upon the assignments. These acts "caused plaintiff to make payments to third parties with whom he had no agreement . . . ." Plaintiff alleges these acts caused his home to fall into foreclosure, his loan to be in default, and interest and late fees to accrue.

These allegations are insufficient to state a negligence cause of action. To the extent plaintiff's negligence theory relies on a section 2937 violation, it fails for the reasons set forth above. Neither the SAC nor plaintiff's appellate brief cites any facts or law suggesting that defendant's allegedly placing plaintiff's loan in a servicing pool was inherently a breach of defendant's duty of care.

Regarding causation, the SAC does not attribute defendant's placing plaintiff's loan in a servicing pool to any allegedly misdirected mortgage payments: Plaintiff avers he

did not receive notice of the assignments when they were made, but does not allege that defendant placed plaintiff's loan in a servicing pool at the time of the assignments.

Additionally, plaintiff does not indicate he can plead around the judicially noticeable fact that he entered into two loan modification agreements with defendant and therefore knew that defendant was the servicing agent to which he should direct his mortgage payments.

Neither the record nor plaintiff's arguments demonstrate that plaintiff can cure these defects. The trial court thus did not err in sustaining defendant's demurrer to plaintiff's negligence cause of action or abuse its discretion in denying leave to amend.

D. The Trial Court Did Not Err In Sustaining The Demurrer To The Fourth Cause Of Action For Unfair Business Practices Without Leave To Amend Because It Turns On The Same Flawed Theories Underlying Plaintiff's Other Claims

Business and Professions Code section 17200 prohibits any unlawful, unfair, or fraudulent business act or practice. " 'No clear test to determine what constitutes an unfair business practice has been established in California.' " (*Paulus v. Bob Lynch Ford, Inc.* (2006) 139 Cal.App.4th 659, 680.) A plaintiff must also allege a loss of money or property caused by the unfair business practice. (*Hale v. Sharp Healthcare* (2010) 183 Cal.App.4th 1373, 1381.) The cause of action must be stated with reasonable particularity, which is a less stringent pleading standard than that for common law fraud. (*Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1261.)

Here, plaintiff alleges that by defendant's "acts and omissions," defendant engaged in unfair competition and

deprived plaintiff of review for a first lien loan modification. He avers that had he received such a review, he would have qualified for all foreclosure alternatives including a loan modification. In his appellate brief, plaintiff explains "the acts and or omissions by [defendant] . . . includes the failure to give notice of the transferring of his loan as prescribed by [section] 2937 and the violations of Cal. Bus. Code §§17200 and 17203 which prevented [plaintiff] from being assessed for all foreclosure preventions." Neither the SAC nor plaintiff's appellate brief identifies "violations of Cal. Bus. Code §§17200 and 17203" other than the alleged failure to provide notice of the assignments.

These allegations are insufficient to state an unfair, unlawful, or fraudulent business practice or damages. First, to the extent plaintiff relies on the allegations from the other two causes of action as the predicate acts of unfair competition, the claim fails for the same reasons his other causes of action are deficient. Second, plaintiff pleads no act by defendant with reasonable particularity. Third, the fact of the two uncontroverted recorded loan modification agreements contradicts and prevails over plaintiff's allegation that he was not reviewed for a loan modification. Fourth, the allegation that plaintiff would have qualified for another loan modification or other foreclosure alternative is inherently speculative and conclusory given that plaintiff states no facts supporting that assertion. (See *Vanacore & Associates, Inc. v. Rosenfeld* (2016) 246 Cal.App.4th 438, 454 [speculative allegations are insufficient to state a cause of action].)

Finally, plaintiff asserts defendant failed to review him for another loan modification. More specifically, he asserts that because the third assignment was invalid, defendant could not

have contacted him to explore foreclosure alternatives. He argues this allegation counters defendant's assertion that it contacted him on December 28, 2015, as stated in defendant's declaration attached to the May 2016 notice of default. As set forth above, however, the second loan modification agreement expressly directed plaintiff to make payments to defendant at a specified address. Thus, even if, arguendo, the assignment were invalid, it would not have affected plaintiff's knowledge of where he was obligated to direct his mortgage payments or ability to stay current on his payments. Additionally, plaintiff attributes the allegedly false declaration to an allegation that the May 2016 notice of default was invalid. He does so, though, only under the second cause of action which he abandoned.

Neither the appellate record nor plaintiff's appellate brief suggests that if given the opportunity, plaintiff could plead an unfair business practice or legally cognizable resulting damages. The trial court did not err in sustaining defendant's demurrer to plaintiff's unfair businesses cause of action or abuse its discretion in denying leave to amend.

DISPOSITION

The judgment is affirmed. Each party is to bear its own costs on appeal.

NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

JOHNSON, J.